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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TRANS-SPEC TRUCK SERVICE, INC.,
d/b/a TRUCK SERVICE,
Plaintiff
vs.
CATERPILLAR, INC.,
Defendant

CIVIL ACTION
No. 03-1006-L

AUDIOVISUAL DEPOSITION OF JOSEPH M. HOWARD, JR., the Defendant, deponent of Trans-Spec, and a witness called on behalf of the Defendant, pursuant to Federal Rules of Civil Procedure, before Carolyn J. Reimer, Certified shorthand Reporter and Notary Public located in the Commonwealth of Massachusetts, at the Office of CARROLL CAMPBELL, EDWARDS & CONROY, one Constitution Plaza, Boston, Massachusetts, on THURSDAY, AUGUST 9, 2006, commencing at 10:00 a.m.

C. J. REPORTING
At Colonial Plaza, Unit No. 1
Andover, Massachusetts 01810
(978) 409-9090
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PROCEEDINGS

(Exhibit No. 1 marked for identification.)

THE VIDEOGRAPHER: The date is August 9, 2006. The time is approximately 10:00 a.m. We are located in the office of Carolyn J. Reimer, a Notary Public in the Commonwealth of Massachusetts, at the Office of Carroll Campbell, Edwards & Conroy, one Constitution Plaza, Boston, Massachusetts, Incorporated, d/b/a Truck Service, Inc. The Civil Action No. 03-1006-L is being taken the audio Visual deposition, and I will be the deponent's name on these.

MR. GRUNERT: The deponent's name is Joseph Howard, Jr., and he is appearing in the role of the deponent of the plaintiff, Trans-Spec Truck Service, Inc.

THE VIDEOGRAPHER: Thank you. My name is William Boston of Boston Technology, Boston, Massachusetts, and I am the Videographer for this deposition. The stenographer is Carolyn J. Reimer of C. J. Reporting. At this time the attorneys will introduce themselves for the record.

MR. GRUNERT: My name is John Grunert. I represent the Defendant, Caterpillar, Inc., and according to the deposition transcript from my office,

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APPEARANCES:

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Trans-Spec Truck Service, Inc.

ALSO PRESENT:

Dr. William Boston, Videographer
Boston Technology
Boston, Massachusetts

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David Edelberg.

MS. REIMER: My name is Nancy Reimer, and I represent the plaintiff, Trans-Spec Truck Service, Inc., d/b/a Truck Service.

MR. SAMITO: I'm Christian G. Samito, also representing Trans-Spec Truck Service.

THE VIDEOGRAPHER: The stenographer will now swear in the witness.

JOSEPH M. HOWARD, JR.,
a witness called on behalf of the Defendant, having first been satisfactorily identified by the production of his driver's license and duly sworn by the reporter/notary public, testifies and says as follows:

MR. GRUNERT: Nancy, do we want to have the customary stipulations?

MS. REIMER: Yes.

MR. GRUNERT: The witness is going to read and sign the transcript under the pains and penalties of perjury. Notarization is waived. Objections except to the form of the question are reserved until the time of trial. All motions to strike are reserved until the time of trial.

DIRECT EXAMINATION
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I N D E X

DEFENDENT	EXAMINATION BY	PAGE NO.
Joseph M. Howard, Jr.	Mr. Grunert	4

E X H I B I T S

NO.	DESCRIPTION	PAGE NO.
1	Second Amended Notice of Taking Deposition	4
2	Stipulation	9
3	Commercial Lease Master Lease Agreement (TRAC)	31
4	Ford Motor Credit Company Commercial Lease Supplement to Master Lease Agreement (TRAC)	32
5	Exhibit, Trans-Spec Truck Service, Inc. d/b/a Truck Service Second Amended Answer to Caterpillar Inc.'s First Set of Interrogatories	6
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7	Trans-Spec Truck Service, Inc.'s Amended Answer to Caterpillar Inc.'s Request for Admission of Facts	106
8	Interoffice Memo Dated 1/18/02 to Jay Howard from Richard Mitchell	104

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BY MR. GRUNERT:

Q. Good morning, Mr. Howard.

A. Good morning.

Q. I have asked the stenographer to mark as the first exhibit a document entitled Second Amended Notice of Taking Deposition. Have you seen that before?

A. Yes.

Q. And am I correct that you are appearing today to testify on behalf of Trans-Spec as to all of the subject matters identified in that notice except for the subject matter identified in numbered paragraph 8 contained in the Schedule A that's attached to it?

A. Yes.

Q. Does Trans-Spec own any Sterling trucks, or has it ever owned any Sterling trucks, other than the 22 Sterling trucks involved in this case?

A. No.

Q. Has Trans-Spec ever leased any Sterling trucks other than the 22 Sterling trucks involved in this case?

A. No.

Q. When you were deposed in your individual

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<p>PAGE 25</p> <p>1 records?</p> <p>2 A. Yes.</p> <p>3 Q. Did any of the -- well, can you say</p> <p>4 whether there was one or two or three or four? Can</p> <p>5 you tell me how many of the six failures you recall</p> <p>6 occurring on engines you had before you acquired the</p> <p>7 Sterling trucks? Can you tell me how many of those</p> <p>8 were specifically on C-12s?</p> <p>9 A. I can't tell. The appearance of the</p> <p>10 trucks between 3176s and C-12s were identical also.</p> <p>11 We had 20 something of them.</p> <p>12 Q. How do you know any of them were on C-12s?</p> <p>13 A. Because, as I recall, we did have failures</p> <p>14 after the 3176s were all gone.</p> <p>15 Q. And when was that?</p> <p>16 A. That would have been -- that would have</p> <p>17 been after we acquired the Sterlings.</p> <p>18 Q. You testified when you were deposed</p> <p>19 individually that when you were considering</p> <p>20 acquisition of the Sterling trucks involved in this</p> <p>21 case and considering what type of engines you might</p> <p>22 want in them, one thing you took into account was</p> <p>23 information that your company had acquired through</p> <p>24 its experience in the retail truck repair part of its</p> <p style="text-align: right;">C. J. REPORTING 978.409.9090 www.cjreporting.com</p>	<p>PAGE 28</p> <p>1 Q. When was that purchase and sale agreement</p> <p>2 signed?</p> <p>3 A. I believe in May, possibly. Yeah, I</p> <p>4 believe it was in May.</p> <p>5 Q. And did negotiations with respect to the</p> <p>6 sale continue after May?</p> <p>7 A. No.</p> <p>8 Q. So the sale was accomplished in May, and</p> <p>9 all that remained was delivery?</p> <p>10 A. Yes, I have a written contract.</p> <p>11 Q. And when were the trucks actually</p> <p>12 delivered to Republic Financial?</p> <p>13 A. Ten were delivered in June.</p> <p>14 Q. On what date in June?</p> <p>15 A. I don't recall exactly.</p> <p>16 Q. But those 10 trucks that were delivered in</p> <p>17 June, physical possession of those trucks left</p> <p>18 Trans-Spec. They were either driven or put on a</p> <p>19 flatbed and taken down to Republic Financial;</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. And what about the other 12. When were</p> <p>23 they delivered?</p> <p>24 A. They will be delivered within the next two</p> <p style="text-align: right;">C. J. REPORTING 978.409.9090 www.cjreporting.com</p>
<p>PAGE 26</p> <p>1 business. Do you remember testifying to that effect?</p> <p>2 A. Yes.</p> <p>3 Q. In the retail truck repair part of</p> <p>4 Trans-Spec's business, how many C-12 flywheel housing</p> <p>5 failure or flywheel housing bolt failures have you</p> <p>6 encountered?</p> <p>7 A. None.</p> <p>8 Q. How many customers, on average, do you</p> <p>9 service in that part of your business per year?</p> <p>10 A. On the repair side, our public repair</p> <p>11 facility?</p> <p>12 Q. Yes.</p> <p>13 A. I believe we have somewhere in the</p> <p>14 vicinity of 3600 customers.</p> <p>15 Q. Can you give me a ballpark figure on how</p> <p>16 many trucks you probably service in the retail part</p> <p>17 of your business in an average year?</p> <p>18 A. No.</p> <p>19 Q. Is it more than a thousand?</p> <p>20 A. I wouldn't think so.</p> <p>21 Q. Has Trans-Spec sold the Sterling trucks</p> <p>22 that are involved in this case?</p> <p>23 A. Yes.</p> <p>24 Q. Who is the purchaser?</p> <p style="text-align: right;">C. J. REPORTING 978.409.9090 www.cjreporting.com</p>	<p>PAGE 29</p> <p>1 weeks.</p> <p>2 Q. So Trans-Spec still has possession of</p> <p>3 those trucks?</p> <p>4 A. Yes.</p> <p>5 Q. At its plant on Eskow Road in Worcester?</p> <p>6 A. Yes.</p> <p>7 Q. And those trucks were not in fact</p> <p>8 delivered on July 29, 2005; correct?</p> <p>9 A. No.</p> <p>10 Q. Was there ever a plan to deliver them on</p> <p>11 July 29, 2005?</p> <p>12 A. Yes.</p> <p>13 Q. Why weren't they delivered that day?</p> <p>14 A. Our new trucks came in with a slight, very</p> <p>15 slight, problem.</p> <p>16 Q. So they weren't delivered because you</p> <p>17 continued to use those trucks?</p> <p>18 A. Yes.</p> <p>19 Q. Those Sterling trucks?</p> <p>20 A. Yes.</p> <p>21 Q. For the 10 trucks that were delivered in</p> <p>22 June 2005, has Trans-Spec received payment?</p> <p>23 A. Yes.</p> <p>24 Q. What was the per-truck price that</p> <p style="text-align: right;">C. J. REPORTING 978.409.9090 www.cjreporting.com</p>
<p>PAGE 27</p> <p>1 A. Republic Financial, I believe, is their</p> <p>2 name.</p> <p>3 Q. What is the address for Republic</p> <p>4 Financial?</p> <p>5 A. I did not bring that information with me.</p> <p>6 I can supply that for you, however.</p> <p>7 Q. What was the name of the individual at</p> <p>8 Republic Financial with whom you negotiated the sale?</p> <p>9 A. I negotiated with South Jersey Truck</p> <p>10 Sales, Rick Boyd. He was the broker.</p> <p>11 Q. Where is Mr. Boyd located?</p> <p>12 A. In South Jersey?</p> <p>13 Q. Where in South Jersey?</p> <p>14 A. Actually, he's right outside of</p> <p>15 Philadelphia. I don't have that exact address with</p> <p>16 me either.</p> <p>17 Q. Do you have a signed purchase and sale</p> <p>18 agreement?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Does that signed purchase and sale</p> <p>21 agreement have Republic Financial's address on it?</p> <p>22 A. Yes, it does.</p> <p>23 Q. Does it have the broker's address on it?</p> <p>24 A. No, it does not.</p> <p style="text-align: right;">C. J. REPORTING 978.409.9090 www.cjreporting.com</p>	<p>PAGE 30</p> <p>1 Trans-Spec received?</p> <p>2 A. \$33,500 each.</p> <p>3 Q. Is that the purchase price that is</p> <p>4 specified in the contract for the remaining 12</p> <p>5 trucks?</p> <p>6 A. Yes and no.</p> <p>7 Q. Explain that answer, please.</p> <p>8 A. If we didn't deliver the balance of the</p> <p>9 trucks by July 29, then there would be a \$500 per</p> <p>10 vehicle penalty.</p> <p>11 Q. You didn't deliver them; so you've</p> <p>12 incurred the \$500 per truck penalty; correct?</p> <p>13 A. That's right.</p> <p>14 Q. Is the price you expect to receive for</p> <p>15 those 12 trucks \$33,000 each?</p> <p>16 A. Yes.</p> <p>17 Q. Is there a specific delivery date when</p> <p>18 you're now going to deliver them?</p> <p>19 A. Not specific, no.</p> <p>20 Q. Does the written contract, the purchase</p> <p>21 and sale agreement, specify any further penalties for</p> <p>22 further delays in delivering them?</p> <p>23 A. No.</p> <p>24 MR. GRUNERT: Mark this Exhibit 3, please.</p> <p style="text-align: right;">C. J. REPORTING 978.409.9090 www.cjreporting.com</p>

1 **A. In March of 2003.**
 2 **Q.** Did you initiate the discussions by the
 3 means of a telephone call?
 4 **A. Give me one second. I want to get this**
 5 **right. It was March of 2004 by a telephone**
 6 **conversation. Then again in June of 2004 when we**
 7 **sold him -- maybe it was March. I think it was March**
 8 **when we sold him the seven 1997 Freightliners. He**
 9 **buys fleets. Historically, he's purchased our**
 10 **fleets. And I discussed the Sterlings at that time.**
 11 **Q.** Was that the first attempt that you had
 12 made to negotiate a sale of these Sterling trucks?
 13 **A. A serious one, yes.**
 14 **Q.** Well, when you say a serious one, that
 15 suggests that there was -- there were one or more
 16 less significant attempts made earlier. Is that the
 17 case?
 18 **A. Yes, around the 2003 area I would have**
 19 **loved to have gotten rid of them then. At that time**
 20 **up through 2004 we never had enough of them running**
 21 **where we could.**
 22 **Q.** During the 2003/2004 period, prior to your
 23 initial discussions with Mr. Herring, who did you
 24 talk about -- with whom did you talk about a possible
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1 purchase of those trucks?
 2 **A. John David Herring.**
 3 **Q.** Oh, okay. So it was Truck Connection?
 4 **A. Yes.**
 5 **Q.** But in March 2004 you had some more
 6 serious discussions with him about a purchase of
 7 those trucks?
 8 **A. Yes.**
 9 **Q.** And what did you say and what did he say?
 10 **A. I wanted to order a new fleet and would**
 11 **you be a buyer, and he said yes, he would. And the**
 12 **first time he said the trucks were -- he put a value.**
 13 **He said they're worth somewhere in the \$48,000 apiece**
 14 **range.**
 15 **Q.** And what did you say to him?
 16 **A. Then I spoke to Steve Gustafson about**
 17 **purchasing new trucks but, again, we couldn't get**
 18 **them all running enough to do anything to actually**
 19 **make a transfer.**
 20 **Q.** Well, when you spoke with John David
 21 Herring in March 2004, how many trucks did you tell
 22 him that you had to sell or that you wanted to sell?
 23 **A. Twenty-two.**
 24 **Q.** At that time did you also talk with him
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1 about selling the seven 1997 Freightliners?
 2 **A. No, he had already purchased them. Well,**
 3 **he -- I had already made the deal and he just had to**
 4 **view them, and he had arrived to actually look at the**
 5 **trucks.**
 6 **Q.** So Mr. Herring came to Worcester to
 7 inspect the seven 1997 Freightliner trucks that you
 8 had reached an agreement with him to sell to him?
 9 **A. Yes.**
 10 **Q.** And at that meeting in Worcester you
 11 discussed with him possibly selling him the 22
 12 Sterling trucks as well; correct?
 13 **A. Well, yes. Yes. To make it brief, yes.**
 14 **But it's a long, drawn out thing where you have to**
 15 **order trucks; you have to find out when the delivery**
 16 **date of the new trucks are. And then you have to get**
 17 **a projected figure from him of what will he pay in**
 18 **either three or six months. Or in the past it's been**
 19 **a year by the time a new truck would arrive. He had**
 20 **to get a build date from the manufacturer of the**
 21 **truck.**
 22 **Q.** When did Mr. Herring's visit to your
 23 facility in Worcester to inspect the Freightliner
 24 trucks occur?
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1 **A. I believe it was in March of '94.**
 2 **Q.** Had you discussed with him, in a serious
 3 vein, selling these 22 Sterling trucks before then?
 4 **A. Yes. You would periodically talk to him**
 5 **and get values so you could find out when you can do**
 6 **such a deal. That's a big deal for our company to**
 7 **turn over that many trucks.**
 8 **Q.** In fact, the only time you had turned over
 9 a similar number of trucks was when you bought these
 10 Sterling trucks; right?
 11 **A. Yes, we -- for the most part we make a**
 12 **six-truck-a-year purchase of new vehicles.**
 13 **Q.** When you acquired your 22 Sterling trucks,
 14 that was a transaction that was unique in the history
 15 of Trans-Spec; correct?
 16 **A. Yes.**
 17 **Q.** And that was also the first time that you
 18 had ever leased trucks rather than taking title to
 19 them; correct?
 20 **A. No.**
 21 **Q.** No, you had done that before?
 22 **A. All of them. All of the new vehicles we**
 23 **purchased were leased to start with, and then we**
 24 **would buy the lease out.**
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1 **Q.** So what was unique in the history of
 2 Trans-Spec's business about the acquisition of the
 3 Sterling trucks was that you had never acquired
 4 anywhere near that number and you had never acquired
 5 Sterling trucks before?
 6 **A. On new trucks, that's right.**
 7 **Q.** Had you ever acquired a similar number of
 8 used trucks?
 9 **A. Yes.**
 10 **Q.** When was that?
 11 **A. The prior two years.**
 12 **Q.** You had acquired in a single
 13 transaction -- sometime in the year 1999 or 1998, you
 14 had acquired something like 20 or 21 or 22 trucks all
 15 at once?
 16 **A. No, not the same type of truck all at**
 17 **once. In a year, in a calendar year we had purchased**
 18 **close to that many at onetime, used trucks, three of**
 19 **this and four of that, two of this. When you get a**
 20 **contract and a truck was taking one year to acquire a**
 21 **new one, you didn't have time to order a new truck.**
 22 **So you'd have to purchase a used truck or two or**
 23 **three, and then you would order your trucks to**
 24 **replace the used trucks. And in the two prior years**
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1 **we were growing in leaps and bounds, and we basically**
 2 **had to get back in with new vehicles. The used ones,**
 3 **they're only going to live so long. So that's what**
 4 **we did.**
 5 **Q.** But the fact is that before you acquired
 6 these 22 Sterling trucks, Trans-Spec had never before
 7 in a single transaction acquired anything close to 22
 8 trucks?
 9 **A. Yes.**
 10 **Q.** So when you acquired your -- strike that.
 11 When Mr. Herring came to visit your
 12 facility in March of 2004, did he inspect any of the
 13 Sterling trucks?
 14 **A. Yes, he had seen them before.**
 15 **Q.** Had he inspected them before?
 16 **A. A sample, you know, one or two. He's**
 17 **never seen every single one of them. He had no**
 18 **knowledge of the problems we were having with them.**
 19 **Q.** Did you tell him about those problems in
 20 March 2004?
 21 **A. Yes, I did.**
 22 **Q.** What did he say?
 23 **A. The price is dropped 10 grand.**
 24 **Q.** What did you tell him about the nature of
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1 the problem you were having?
 2 **A. I told him I had -- we had approximately**
 3 **anywhere from six to eleven out of service at all**
 4 **times because of this problem. He probably wouldn't**
 5 **have a problem in another application, but in ours**
 6 **they're not working. And I basically had to find a**
 7 **way to get them all intact so that I could do a**
 8 **trade. And he said what was the problem, and I told**
 9 **him and I said that it was on us because Caterpillar**
 10 **left us high and dry, and that was it; that's why I**
 11 **wanted to bail out of them.**

12 **Q. So he said, okay, the price is now going**
 13 **to be 38,000?**

14 **A. At that time he said the price -- well, in**
 15 **'03 it still would have been 38. I'm sorry, 48. In**
 16 **March of '04 he was talking about 44. And then it**
 17 **was -- then he said 36, and then when it came right**
 18 **down to it he was at 30. So I sold them to the other**
 19 **party. He really didn't want the trucks after the**
 20 **problem.**

21 **Q. But in March of 2004 Mr. Herring from the**
 22 **Truck Connection told you that the Truck Connection**
 23 **would pay somewhere between 30 and \$36,000, 30 and**
 24 **\$34,000 per truck for those Sterlings?**

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1 **A. Before I had addressed -- before I**
 2 **disclosed the problem with the trucks, he basically**
 3 **said the trucks were worth about \$44,000. And then**
 4 **he said he would try to get me 36, and then when he**
 5 **came right down to it -- so then I started**
 6 **negotiating new trucks, by the time I had negotiated**
 7 **the new trucks, it was June. And he arrived -- he**
 8 **had his wife with him and he flew in, and he said**
 9 **that he really only wanted to pay 30 to 32. That was**
 10 **his -- and then I sold them to the next guy that**
 11 **walked in, which was Republic. And then the fellow**
 12 **from the Truck Connection wasn't very happy with us.**

13 **Q. I just want to have it clear. In June**
 14 **2004 you had an offer from John David Herring at the**
 15 **Truck Connection to purchase these Sterling trucks at**
 16 **30 to \$32,000 apiece?**

17 **A. Yes.**

18 **Q. And that was after --**

19 **MS. REIMER: Let me just insert an**
 20 **objection.**

21 **A. Thirty-five, '05, yes.**

22 **Q. You told me before that Mr. Herring came**
 23 **to inspect the 77 Freightliners in June 2004?**

24 **A. Yes.**

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1 **MS. REIMER: Objection. 77 trucks?**

2 **MR. GRUNERT: 97 trucks.**

3 **MS. REIMER: I thought you said 77.**

4 **THE WITNESS: I'm getting him all**
 5 **confused. Take a deep breath.**

6 **Q. When did Mr. Herring tell you that he**
 7 **would try to get you \$36,000 per truck for the**
 8 **Sterling trucks?**

9 **A. March of 2005.**

10 **Q. Did you have any conversations with**
 11 **Mr. Herring in 2004 where he gave you a price that he**
 12 **would be willing to pay for those trucks?**

13 **A. When he purchased the 1997 Freightliners,**
 14 **which I believe was March of 2004, he said the trucks**
 15 **were worth at that time -- I think 2003 he had said**
 16 **they were worth 48,000; 2004, 44,000; 2005, 38,000,**
 17 **but until it came down to getting up the money.**

18 **Q. So in March 2004 Mr. Herring initially**
 19 **said the trucks are worth -- the Sterling trucks are**
 20 **worth \$44,000 each?**

21 **A. Yes.**

22 **Q. At that time you had not told him about**
 23 **the flywheel housing problems?**

24 **A. Yes.**

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1 **Q. Yes, you had not?**

2 **A. I had not.**

3 **Q. You first told him about the flywheel**
 4 **housing problems in March 2005?**

5 **A. Four.**

6 **Q. All right. After you told him about the**
 7 **flywheel housing problems in March 2004, did he name**
 8 **a new price for the trucks, the Sterling trucks?**

9 **A. I think he said he could try to get me 34**
 10 **at that time.**

11 **Q. Did you have any further discussions with**
 12 **him in March or April 2004, the spring of 2004,**
 13 **concerning a possible sale to the Truck Connection of**
 14 **the Sterling trucks?**

15 **A. No, because I owed Ford Motor Credit at**
 16 **that time 39,000 apiece. I had to at least get out**
 17 **of the note.**

18 **Q. So the answer is you had no more**
 19 **discussions with him at that time?**

20 **A. None.**

21 **Q. And then in March 2005, knowing about the**
 22 **flywheel housing problems, Mr. Herring said he would**
 23 **pay 30 to 32,000 for those trucks?**

24 **A. No, he really didn't want the trucks until**

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1 **I purchased the -- until he found out I would be**
 2 **purchasing the 200,000 mile warranty. And then he**
 3 **said he would give me 30 -- he said, I'd like to own**
 4 **those trucks for 30 to 32, and I told him it's out of**
 5 **the question.**

6 **Q. And at that point you were already in**
 7 **negotiations with Republic Financial; correct?**

8 **A. We were starting negotiations at that**
 9 **time.**

10 **Q. So you ultimately sold the trucks to**
 11 **Republic Financial for a little bit more than what**
 12 **the Truck Connection was willing to give you for**
 13 **them?**

14 **A. Right. Well, I wanted 37 and the best I**
 15 **could get out of it was thirty-three-five.**

16 **Q. So ultimately you ended up selling those**
 17 **trucks for less than what you had to pay Ford Motor**
 18 **Credit Corporation to get title to them; right?**

19 **A. Well, that was a year prior. So what I**
 20 **owed on the trucks at that time was approximately 33,**
 21 **33, 33.5 somewhere in there. So I could sell them at**
 22 **a lower price, which I did. The first time I've had**
 23 **the ability to get out of those things.**

24 **Q. You've mentioned that you have -- that**
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1 **your company, Trans-Spec, has recently acquired a new**
 2 **fleet of trucks?**

3 **A. Yes.**

4 **Q. How many?**

5 **A. Twelve.**

6 **Q. They're Freightliners, are they?**

7 **A. Yes.**

8 **Q. When did you take delivery of them?**

9 **A. Within the next two weeks.**

10 **Q. So you don't have them yet?**

11 **A. We've had them. We've installed our**
 12 **equipment on them. And they came in with a lack of**
 13 **a -- what they call a suspension dump valve. And**
 14 **they're installing the suspension dump valves at**
 15 **Freightliner's expense at six hours per truck.**
 16 **That's the delay.**

17 **Q. So you've had delivery of the trucks, but**
 18 **they haven't been in a condition to place into**
 19 **service yet?**

20 **A. We haven't paid for the trucks yet.**

21 **Q. When did these trucks that were lacking**
 22 **the dump valve, when did they actually arrive?**

23 **A. They started coming in around I think the**
 24 **21st of July. We should have made the deadline but**

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<p>PAGE 109</p> <p>1 information stating that there was a flywheel housing 2 failure on that engine in August 2004 what document 3 that comes from?</p> <p>4 A. Well, it says black binder which is a 5 notebook that was put together by us with pictures 6 and actual photographs of different flywheel housings 7 that were broken, and I would believe this is one of 8 them.</p> <p>9 Q. And does Exhibit 6 indicate that the work 10 repairing that flywheel housing was done by 11 Southworth-Milton?</p> <p>12 A. No.</p> <p>13 Q. Well, there's a column headed "location of 14 service," right, on this document, if you look at the 15 first page?</p> <p>16 A. Yes.</p> <p>17 Q. And does information in the column 18 location of service report where the work was done on 19 the flywheel housing?</p> <p>20 A. Oh, it does say that. You're absolutely 21 right. It says Southworth-Milton. I was looking at 22 the wrong column. I apologize.</p> <p>23 Q. So does that cause you to believe that 24 there should be a Southworth-Milton invoice or work C. J. REPORTING 978.409.9090 www.cjreporting.com</p>	<p>PAGE 112</p> <p>1 conclusion.</p> <p>2 A. Do you want me to answer?</p> <p>3 MS. REIMER: To the extent that you can.</p> <p>4 A. Well, we're not sure that there wasn't one 5 prior to this. We didn't have the staff when all 6 these trucks were broken at once. We were running 7 scared, and we just didn't keep accurate records. We 8 were just trying to do anything to get trucks on the 9 road, and everybody was fixing trucks. Our records 10 at that point were not very accurate, and by saying 11 that this truck only had one, I can't say that for 12 sure. It probably had failures prior to that. And 13 we just don't have the records. We're still looking. 14 We might find some but we don't have the accurate 15 records. I can't believe that one truck would 16 survive when the other ones didn't.</p> <p>17 Q. Will you agree with me that if there was 18 but a single flywheel housing or flywheel housing 19 bolt failure on that engine and it occurred in August 20 2004 and was repaired by Southworth at Caterpillar's 21 expense and the failure never recurred, that there 22 was no breach of warranty by Caterpillar with respect 23 to that engine?</p> <p>24 MS. REIMER: Objection. C. J. REPORTING 978.409.9090 www.cjreporting.com</p>
<p>PAGE 110</p> <p>1 order or document of some type memorializing the work 2 done on that flywheel housing in August 2004?</p> <p>3 A. Well, this information came from 4 someplace. So I would say that there is.</p> <p>5 Q. Well, the first column in this chart is 6 headed "record provider"; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And in the first column with respect to 9 the 8/23/2004 work, there's a reference to black 10 binder/Southworth-Milton. Does that mean that there 11 is a Southworth-Milton document in that black binder 12 that you referred to at the first day of your 13 deposition?</p> <p>14 A. That's the way I would see it.</p> <p>15 Q. In any event, if Exhibit 6 is correct, 16 there was a single flywheel housing or flywheel 17 housing bolt failure on Engine 6700 and it was 18 repaired by Southworth-Milton in August 2004; 19 correct?</p> <p>20 A. I believe so.</p> <p>21 Q. And the problem did not recur thereafter; 22 correct?</p> <p>23 A. From the information we could find.</p> <p>24 Q. Do you have any information to indicate C. J. REPORTING 978.409.9090 www.cjreporting.com</p>	<p>PAGE 113</p> <p>1 A. That's the way it appears, yes.</p> <p>2 Q. Now, with respect, and just to follow-up 3 and at least as of today, you're not aware of any 4 record to show that there were any other flywheel 5 housing or flywheel housing bolt failures on that 6 engine; correct?</p> <p>7 A. I don't have anything in front of me that 8 would say anything different at this time.</p> <p>9 Q. Now, request -- referring you again to 10 Exhibit 7, Request No. 19 asked Trans-Spec to admit 11 that it has experienced no flywheel housing failures 12 on the engine bearing Serial No. 2KS27878, and No. 20 13 asked Trans-Spec to admit that it had experienced no 14 flywheel housing bolt failures on that engine. Do 15 you see those two paragraphs on page 5 of Exhibit 7?</p> <p>16 A. Yes, I do.</p> <p>17 Q. And Trans-Spec denied those requests; 18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. Now, I'm looking at the section of 21 Exhibit 6 that pertains to Engine 2KS27878 which was 22 in your Truck No. 6200, and there is no flywheel 23 housing or flywheel housing bolt failure identified 24 with respect to that engine; correct? C. J. REPORTING 978.409.9090 www.cjreporting.com</p>
<p>PAGE 111</p> <p>1 that the problem did recur?</p> <p>2 A. No, I believe it did not.</p> <p>3 MR. GRUNERT: The videographer is telling 4 me that it's time to change the tape. So let's take 5 a very short break while he does that.</p> <p>6 THE VIDEOGRAPHER: The time is 2:21 p.m. 7 We are off the record. 8 (Recess taken.)</p> <p>9 THE VIDEOGRAPHER: The time is 10 approximately 2:31 p.m. We are on the record. 11 BY MR. GRUNERT:</p> <p>12 Q. Now, the repair to Engine No. 2KS27904 13 that you believe Southworth-Milton did in August 2004 14 was done at Caterpillar's expense; correct?</p> <p>15 A. I believe so, yes.</p> <p>16 Q. So the one and only failure of the 17 flywheel housing or flywheel housing bolts on that 18 particular engine was repaired by Caterpillar or at 19 Caterpillar's expense by Southworth-Milton and the 20 failure never recurred; right?</p> <p>21 A. Yes.</p> <p>22 Q. In what respect did Caterpillar breach its 23 warranty with respect to that engine?</p> <p>24 MS. REIMER: Objection. Calls for a legal C. J. REPORTING 978.409.9090 www.cjreporting.com</p>	<p>PAGE 114</p> <p>1 MS. REIMER: Objection.</p> <p>2 A. This isn't complete. This is the 3 information that we could find. The trucks that we 4 had taken apart to replace the bolts or to apply 5 Loctite on the bolts and reapply the ones that the 6 flywheel housing had loosened up and we had caught 7 prior to doing damage wouldn't be on here. If there 8 wasn't parts on anything, it probably wouldn't be on 9 here. Again, we were running scared just trying to 10 fix anything we could. So this is not complete.</p> <p>11 Q. How many failures of the flywheel housing 12 or flywheel housing bolts occurred on Engine 13 2KS27878?</p> <p>14 A. I can't say.</p> <p>15 Q. Can you identify any date when a failure 16 of the flywheel housing or flywheel housing bolts on 17 that engine occurred?</p> <p>18 A. The information isn't here to substantiate 19 any failure.</p> <p>20 Q. Well, when you responded to my request for 21 admission by denying paragraphs 19 and 20, you must 22 have had information before you indicating that there 23 had been a failure; correct?</p> <p>24 A. Knowledge of every truck having a failure C. J. REPORTING 978.409.9090 www.cjreporting.com</p>

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1 Q. Again, numerous failures on this truck?
 2 A. Yeah.
 3 Q. And the last one occurred just in March of
 4 this year and was repaired by Southworth-Milton?
 5 A. Yes.
 6 Q. And that one was at no expense to
 7 Trans-Spec and the problem hasn't recurred; correct?
 8 A. Correct.
 9 Q. Other than that, the repairs were made
 10 either by Trans-Spec itself or by Minuteman Trucks;
 11 true?
 12 A. Let me see, 11/17 was Trans-Spec.
 13 Q. No, I see one in September '02 was made by
 14 Southworth; correct?
 15 A. 10/27 was Trans-Spec. Minuteman and
 16 7/13. 12/7/01, the first one that Minuteman did.
 17 And then on 9/9/02, that was Southworth-Milton.
 18 Q. Those two were repaired at no expense to
 19 Trans-Spec; correct?
 20 A. Correct. On 2/6/03 it was Minuteman
 21 again.
 22 Q. Again, repaired at no expense to
 23 Trans-Spec; correct?
 24 A. Yes. 10/27 Trans-Spec did it. 11/17, I
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1 Now, the recent ones, now that we've
 2 recognized the rear block failures that Southworth is
 3 now exclusively doing the final repairs, we seem to
 4 be getting a longer life between the repeats. And so
 5 the bottom line is if Southworth had taken the bull
 6 by the horns in the first place, we wouldn't be here
 7 today. They're the ones capable of doing this right.
 8 Q. Some of the engines had one or two
 9 failures over the five years you had them?
 10 A. Uh-huh.
 11 Q. Others had five or six or more failures
 12 over the five years you had them. Have you ever
 13 attempted to determine why some trucks had a small
 14 number of failures and others had a large number of
 15 failures?
 16 MS. REIMER: Objection.
 17 A. Well, besides the fact what I just
 18 explained that you have different drivers, different
 19 techniques, good drivers, not so good drivers, you've
 20 got different jobs, and we can't pin it down to one
 21 driver or one truck, because all the trucks have had
 22 different drivers and done different things.
 23 Q. Well, who were the drivers who were
 24 assigned to Truck 9700 over the course of its life
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1 think we already went over that.
 2 Q. So those two Trans-Spec paid for; right?
 3 A. Yes. And on 3/22/05, that was
 4 Southworth-Milton and that's the last time.
 5 Q. Now, this is a truck where right from the
 6 year 2000, for about a year, Trans-Spec had repeated
 7 transmission problems; right?
 8 A. Yes.
 9 Q. And in fact in September 2001 you replaced
 10 the transmission; right?
 11 A. Yes.
 12 Q. So you had a year of transmission
 13 problems, and then shortly thereafter you had a
 14 flywheel housing problem; right?
 15 A. Well, we had a year of vibration causing
 16 problems, and we've looked into that, what comes
 17 first, the chicken or the egg. Was the housing vent
 18 cracked, loose, causing the transmission to shake
 19 apart, or was it the other way around? I really
 20 don't know.
 21 Q. Minuteman Truck was servicing it for a
 22 year, and what Minuteman Truck focused on was the
 23 transmission; correct?
 24 MS. REIMER: Objection.
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1 with Trans-Spec?
 2 A. There were probably 20 or 40. It's
 3 impossible to come up with a specific driver.
 4 Q. So you're telling me that--
 5 A. The one that wrecked it was Danzo.
 6 Q. You're telling me that Trans-Spec did not
 7 routinely assign the same drivers to a particular
 8 truck?
 9 A. Trans-Spec operates at 130 percent
 10 productivity. In other words, a truck has to work
 11 1.3 shifts per day on a five-day week to survive.
 12 So, therefore, you've got the slip seed. And once
 13 trucks started breaking, it compounded even more. We
 14 were slip seeded more. Sleep seeded more. When a
 15 truck is broken, you can't tell a guy, well, you can
 16 starve this week. You have to put him in another
 17 truck.
 18 Q. When Truck 9700 was operating, were there
 19 drivers who were ordinarily assigned to drive that
 20 truck, specific drivers?
 21 A. For short periods of time.
 22 Q. Trans-Spec made no effort in the year 2000
 23 when these trucks were not having flywheel housing
 24 problems to assign the same drivers day after day,
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1 A. I don't know that. Let's see, vibration
 2 through transmission shifter. That doesn't
 3 necessarily mean it's the transmission. Rear case
 4 shoot up at rear bearing. That could have been a bad
 5 universal, bad yoke.
 6 Q. Let me ask you this, has Trans-Spec ever
 7 attempted to make a determination why some of its
 8 engines, a few of its engines, have had very many
 9 failures, five, six, seven failures, and then many of
 10 the other engines only had, at most, one or two
 11 failures?
 12 A. Well, the failures that -- the consistent
 13 failures that Trans-Spec had is because Trans-Spec
 14 was throwing them together, not able to purchase new
 15 flywheels. We were finding flywheels any way we can.
 16 We were patching them. We were having them repaired.
 17 There wasn't adequate flywheels available. When
 18 Southworth-Milton and Minuteman repaired them, I do
 19 believe that the -- after the second time or on the
 20 second time, there's damage to the rear of the block,
 21 and they were putting epoxy on it and patching them
 22 up. And the block should have been replaced, but
 23 they neglected to do so. And that's why there's
 24 numerous ones.
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1 week after week, to a particular truck, did you?
 2 A. You can try and start out doing that, but
 3 it doesn't work out.
 4 MS. REIMER: Is this a good time to take a
 5 break?
 6 MR. GRUNERT: Sure, we can take a break.
 7 THE VIDEOGRAPHER: The time is
 8 approximately 4:17 p.m. We are off the record.
 9 (Recess taken.)
 10 THE VIDEOGRAPHER: We are on the record.
 11 The time is approximately 4:25 p.m.
 12 BY MR. GRUNERT:
 13 A. When I said this No. 6, Exhibit No. 6 was
 14 inaccurate, it is incomplete, not inaccurate. What's
 15 there seems to be accurate.
 16 Q. I want to ask just a couple of questions
 17 before we return to going through these different
 18 trucks. Were all 22 of the Sterling trucks equipped
 19 for use both as fuel delivery trucks and as end dump
 20 trailer trucks?
 21 A. At different times they were.
 22 Q. Did they all have the same number of power
 23 takeoffs off the transmission?
 24 A. At one time or another they did.
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